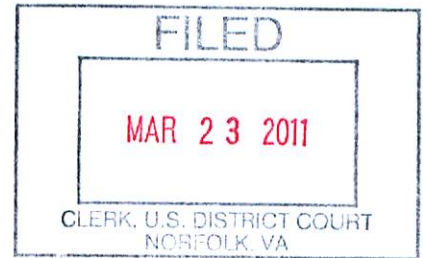


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Newport News Division



T-MOBILE NORTHEAST LLC,

Plaintiff,

v.

CIVIL ACTION NO. 4:10cv82

THE CITY COUNCIL OF THE CITY
OF NEWPORT NEWS, VIRGINIA,

and

THE CITY OF NEWPORT NEWS, VIRGINIA,

Defendants.

FINAL ORDER

This matter comes before the court on the Motion for Summary Judgment, filed by the plaintiff on November 17, 2010, and the cross Motion for Summary Judgment filed by the defendants on December 8, 2010. The matter was referred to a United States Magistrate Judge by Order of December 29, 2010, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Federal Rule of Civil Procedure 72(b), to conduct hearings, including evidentiary hearings, if necessary, and to submit to the undersigned proposed findings of fact, if applicable, and recommendations for the disposition of the motions.

The United States Magistrate Judge's Report and Recommendation ("Report and Recommendation") was filed on February 4, 2011. The magistrate judge recommended granting in part and denying in part

the plaintiff's Motion for Summary Judgment, dismissing the plaintiff's state law claims, and denying the defendants' Motion for Summary Judgment. As a result, the magistrate judge recommended an injunction be issued requiring the City Council to approve the plaintiff's Conditional Use Permit.

By copy of the Report and Recommendation, the parties were advised of their right to file written objections thereto. On February 24, 2011, the court received the plaintiff's Objections to the Report and Recommendation, Docket #38, and the defendants' Objections to the Report and Recommendation, Docket #39. On March 10, 2011, the plaintiff filed its Response to defendants' objections, Docket # 40, and the defendants filed their Response to the plaintiff's objections, Docket #41.

The court, having examined the objections to the Report and Recommendation and having made de novo findings with respect thereto, does hereby adopt and approve in full the findings and recommendations set forth in the Report and Recommendation of the United States Magistrate Judge filed February 4, 2011. In particular, the court notes that it finds no merit in the defendants' contention that the denial of the Conditional Use Permit was supported by substantial evidence. The defendants argue that the concerns expressed by residents about the appearance of the tower, the possible decrease of property values in the area, and where the

tower was located all from the basis of substantial evidence supporting the City Council's zoning decision. In conducting its de novo review, the court does not find the evidence to be as the defendants portray it. In the court's review of the evidence, the court finds only one statement in one email by a citizen which could have reasonably been relied upon by the City Council legislators: the statement by Dennis Crawford in his email to the City Council that the tower would be an "eyesore." Otherwise, each of the three individuals who opposed the tower at the hearing spoke only of their fears of radiation and unsupported statements about their belief that the tower would cause their home values to decrease.¹ As correctly detailed by the magistrate judge, federal law preempts local zoning decisions based on concerns about radiation. See 47 U.S.C. § 332(c)(7)(B)(iv); Report and Recommendation 13-15. Additionally, unsupported statements about fears of some possible reduction in home value without further evidence cannot form the basis of substantial evidence. See Report and Recommendation 11-12.


Accordingly, the plaintiff's Motion for Summary Judgment is

¹ The court notes that the total opposition to the tower was comprised of two emails to the City Council and three citizens speaking at the public hearing. By contrast, six people, though admittedly five were employees of T-Mobile, spoke in support of the tower and responded to the concerns expressed by those in opposition. In addition, one of the T-Mobile employees who spoke submitted a petition in support of the tower signed by fifty-one (51) customers of T-Mobile who sought improved coverage in the area with the tower in place.

GRANTED IN PART because the record has failed to demonstrate substantial evidence for the denial of plaintiff's Conditional Use Permit, but **DENIED IN PART** in reference to plaintiff's request for relief on its state law claims and those claims are hereby **DISMISSED**. The defendants' Motion for Summary Judgment is **DENIED**. Moreover, the court **GRANTS** plaintiff injunctive relief by requiring the defendants, namely The City Council of the City of Newport News, to approve forthwith plaintiff's Conditional Use Permit, no later than twenty (20) days from the date of this Order.

The Clerk shall forward a copy of this Final Order to all parties of record.

It is so **ORDERED**.

/s/
Rebecca Beach Smith
United States District Judge 

REBECCA BEACH SMITH
UNITED STATES DISTRICT JUDGE

Newport News, Virginia
March 22, 2011